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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of:)
: Examiner: L. Wong
PONAKALA ET. AL.)
: Group Art Unit: 1761
CPA of Application No.: 09/465,402)
:
Filed: December 17, 1999)
:
For: N-[N-(3,3-DIMETHYLBUTYL)-1- α -)
ASPARTYL]-L-PHENYLALANINE 1-)
METHYL ESTER AS A SWEETENER IN
CHEWING GUM :

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICIAL ACTION AND PETITION FOR EXTENSION OF TIME

Sir:

This paper is presented in response to the official action dated June 3, 2003, Paper No. 20 in the above referenced application.

Claims 19-24 remain pending in the application. Each of these claims stands rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5480668 to Nofre et al ("Nofre"). The Examiner has asserted that since Nofre discloses that N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester (hereinafter referred to as "neotame") is taught to be used as a sweetener, alone or together with other sweeteners, and that neotame may be used in chewing gum. The Examiner further asserts that the claims of the present invention differ as to the amounts of neotame employed and specific use in chewing gums.

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Applicant has previously narrowed the claims, and presented a declaration in response to the above rejection. The Examiner has stated that such declaration is insufficient to overcome the rejection for three reasons. Applicant's attorney would like to respond to these three reasons individually.

The first reason for the insufficiency is stated that the showing of an effective amount to sweeten is specific for 100 ppm neotame. Applicant respectfully contends that the application discloses levels of sweetening amounts that are effective to sweeten (see page 24, lines 6-25). Such levels were reported based on data prepared for submission with The NutraSweet Company's Food Additive Petition. If so required, Applicant would be willing to submit all such data in connection with this application.

As to the second reason for insufficiency, the Examiner has stated that it is not seen where Applicant shows "wherein between 6 and 10 minutes of chewing time, the average sweetness intensity loss rate is less than 0.3 intensity units per minute." Applicant wishes to point out the data set forth in Exhibit 1 to the November 8, 2002 declaration. Please see the tables and graphs in such Exhibit as evidence for the levels of sweetness loss.

The Examiner's third reason for insufficiency is that Applicant's claims are drawn to a combination of known components which produces expected results. Applicant respectfully contends that the claims as amended are limited to an invention which is limited to surprising and unexpected results of the use of neotame. In particular, the key claimed elements are 1) the surprising reduction in sweetening intensity loss at key chewing times, 2) the surprising fact that flavor can be reduced due to the flavor enhancement effect of neotame, and 3) the ability to provide consistent sweetening through the balance of use of neotame with other sweeteners which release sweetness more rapidly than neotame.

Applicant respectfully petitions for a three month extension of time to file this response. The \$950.00 extension fee should be deducted from Deposit Account No. 14-1451.

Respectfully submitted,



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Date: 2 December 2003